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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------------|------------------------|
| 10/743,455 | 12/23/2003 | Jean De Rigal | 118111 | 8148 |
| 25944 | 7590 | 01/23/2008 | | |
| OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850 | | | EXAMINER KRASS, FREDERICK F | |
| | | | ART UNIT 1614 | PAPER NUMBER |
| | | | MAIL DATE 01/23/2008 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/743,455

Applicant(s)

DE RIGAL ET AL.

Examiner

Frederick Krass

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) 16-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 32 and 34-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Previous Rejections

Unless specifically repeated/maintained infra, all previous rejections are withdrawn.

Obviousness Rejection

Claims 1-15 and 34-38 were rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent 2 178 441 (full English language translation) in view of MacFarlane et al (USP 5,313,267).

This rejection is maintained and is now applicable to claims 1-15, 32 and 34-38.

Applicant argues that the prior art does not fairly suggest, teach or disclose the instantly claimed subject matter, particularly the newly recited reflectance values and reflective particles. The use of such particles appears to be conventional in the cosmetic art, however, as acknowledged at pages 16 et seq. of the instant specification; moreover, the reflectance value of 550 to 675 nm appears to represent nothing more than orange coloration: see page 13, lines 15-18.

Where functional parameters such as the instant hue angle, saturation, covering values, etc. are recited and the prior art discloses otherwise similar prior art, the burden is on applicant to demonstrate the unobviousness of those parameters. See In re Greenfield, 197 USPQ 227 (C.C.P.A. 1978). In that case, certain paint additives were functionally characterized as being unexpectedly stable in the presence of formaldehyde. At page 229 of the decision, the court

unambiguously stated that, despite the fact that the rejection was one of obviousness and not anticipation, the burden was nevertheless on applicant to provide factual verification of the alleged functional property:

Appellants argue that the prima facie case is rebutted by a showing that, under the claimed pH conditions, 3-isothiazolones normally decompose, but that they do not do so when formaldehyde is added to the composition; that is, the presence of formaldehyde in the paint compositions have the unexpected property of stabilizing the 3-isothiazolone. However, the validity of the argument depends on whether it has been demonstrated the claimed 3-isothiazolones normally decompose under the claimed conditions... We are inclined to agree with appellants that, if the record establishes that formaldehyde stabilizes the claimed 3-isothiazolones under the claimed conditions, the prima facie case would be rebutted... Appellants have submitted no objective evidence to demonstrate the existence of a degradation problem of 3-isothiazolones and rely solely on the specification.

The examiner similarly maintains his rejection of instant claim 32 as being drawn to the determination of certain parameters necessary to arrive at cosmetic compositions having the instantly claimed appearances through the application of routine experimentation.

Action is Final

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

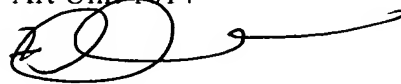
Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (571) 272-0580. The examiner can normally be reached at (571) 272-0580 on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass
Primary Examiner
Art Unit 1614

A handwritten signature in black ink, appearing to be 'F. Krass', with a long horizontal flourish extending to the right.